

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

AIR FORCE OFFICER,

Plaintiff,

v.

No. 5:22-cv-00009-TES

LLOYD AUSTIN, in his official capacity
as Secretary of Defense, *et al.*

Defendants.

NOTICE OF SUPPLEMENTAL FACTUAL DEVELOPMENTS

Defendants respectfully notify the Court of significant new factual developments.

The FDA granted emergency use authorization to the Novavax vaccine, and on July 19, 2022, the CDC endorsed its use. FDA, *Coronavirus (COVID-19) Update: FDA Authorizes Emergency Use of Novavax COVID-19 Vaccine, Adjuvanted* (July 13, 2022), <https://perma.cc/CJ3N-8SAE>; CDC, *CDC Recommends Novavax's COVID-19 Vaccine for Adults* (July 19, 2022), <https://perma.cc/8E93-TG2T>.

In their Second Amended Complaint, Plaintiffs explained that they “believe that receiving a vaccine that was derived from or tested on aborted fetal tissue in its development would violate their conscience and is contrary to their faith.” Second Am. Compl., ¶ 93, ECF No. 84. They alleged that “[a]ll of the COVID-19 vaccines currently available were derived from or tested on (as part of their development) aborted fetal

tissue” and “[f]or this reason, they are unwilling to receive one of the COVID-19 vaccines currently available.” *Id.*, ¶¶ 93–95.

Approval of Novavax adds yet another accessible COVID-19 vaccine to those that Plaintiffs may choose to receive to comply with the Air Force’s immunization program requirements. It has been reported that “[n]o human fetal-derived cell lines or tissue, including HEK293 cells, are used in the development, manufacture or production of the Novavax COVID-19 vaccine candidate.” J. Jenkins, “New Novavax Shot Could Appeal to Pro-Life Christian Skeptics,” *Christianity Today* (Feb. 18, 2022) <https://perma.cc/275N-YH8U>. Novavax was “produced from baculovirus infected Sf9 (fall armyworm) insect cells and MatrixMTM adjuvant containing saponins derived from the soapbark tree.” Fact Sheet for Recipients and Caregivers, <https://perma.cc/NJ6U-T99Q> at 2. Novavax also does not use mRNA technology. HHS Press Release (July 11, 2022), <https://perma.cc/E7U8-LZEG>.

In light of this, the Court should find that Plaintiffs in this case can meet the COVID-19 vaccine requirement without substantially burdening their religious beliefs, and therefore should not issue any preliminary injunctive relief for these individuals. In addition, because they cannot show that their religious beliefs are burdened, Plaintiffs cannot serve as representatives of any class.¹

¹ At the very least, Plaintiffs’ motion for class certification and a class-wide injunction, ECF No. 88, should be held in abeyance pending resolution of the substantially similar class that has already been certified in

Dated: July 22, 2022

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Respectfully submitted,

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Doster v. Kendall, 22-cv-00084 (S.D. Ohio), and pending request for class-wide preliminary relief in that case.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that that document is now available for viewing and downloading from the CM/ECF system. I further certify that the foregoing document is being served this day on all counsel of record, via Notices of Electronic Filing generated by CM/ECF.

/s/ Zachary A. Avallone

Trial Attorney